HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.24293 of 1995

Between:

M.A. Rehman and three others

… Petitioners

And

A.P. Khadi & Village Industries Board,
Rep. by its Chief Executive Officer,
and another

… Respondents

:: ORDER::

Counsel for Petitioners: Shri T.K. Sridhar

Counsel for Respondent No.1: Shri V.T.M. Prasad

March 22, 2007

In this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for issue of a writ of mandamus to the respondents to follow revised cycle appended to Annexure-3 of the Andhra Pradesh Khadi and Village Industries Board Employees (Service Conditions) Regulations, 1979 (for short, 'the 1979 Regulations') and promote them as Accountant/Superintendent with retrospective effect.

Before adverting to the facts of the case and the arguments of the learned counsel, I consider it necessary to mention that during the pendency of the writ petition, petitioner No.1 Shri M.A. Rehman and petitioner No.2 Shri Mahamood Ali died on
25-2-1999 and 18-7-1999 respectively and their legal representatives have not been brought on record. Therefore, the issue which survives consideration by the Court is whether petitioner Nos.3 and 4 are entitled to relief in terms of the prayer made.

The service particulars of petitioner No.3 Smt.M. Rama Devi and petitioner No.4 Smt.S. Durganageswari are as under:

Smt.M. Rama Devi

1.	Date of Birth	---	11-08-1955
2.	Date of First Appointment	As Typist	28-04-1978 AN
3.	Date of Promotion	As UDC	07-11-1981
4.	Passed Accounts Test for Subordinate Officers	Part-I	25-11-1984

5.	Passed Accounts Test for Subordinate Officers	Part-II	25-11-1984
6.	Date of Next Promotion	As Superintendent and presently continuing in the said post.	18-11-2000

Smt.S. Durganageswari

1.	Date of Birth	---	16-03-1950
2.	Date of First Appointment	As L.D.C.	11-02-1981
3.	Date of Promotion	As UDC	22-12-1986
4.	Passed Accounts Test for Subordinate Officers	Part-I	May, 1988
5.	Passed Accounts Test for Subordinate Officers	Part-II	May, 1989

During the pendency of the writ petition, petitioner No.3 – Smt.M. Rama Devi was promoted as Superintendent vide proceedings No.Establishment/Promotions/2000, dated 16-11-2000 and petitioner No.4 – Smt.S. Durganageswari was promoted as Superintendent on 1-10-2003.

The claim of the petitioners for retrospective promotion to the post of Superintendent and/or Accountant is founded on the following assertions:

i) that in terms of paragraph 4 of the 1979 Regulations

read with Anneuxre-2 appended thereto, they are eligible to be considered for promotion to the posts of Superintendent and Accountant;

ii) that the posts of U.D.C and Stenographer constitute feeder cadre for promotion to the post of Superintendent, and Auditor and UDC constitute feeder cadre for promotion to the post of Accountant and the persons who fulfill the conditions of eligibility specified in Annexure-2 are entitled to be promoted as per the cycle specified in Annexure-3;

iii) that at the time of framing of the 1979 Regulations, 22 posts of UDCs, 16 posts of Auditors and 5 posts of Stenographers were available in the feeder cadres from which promotion could be made to the posts of Superintendent and Accountant;

iv) that vide G.O.Ms.No.141, Industries and Commerce (V.I) Department, dated 6-3-1981, the State Government sanctioned increase in the number of posts of UDCs from 22 to 37. Subsequently, vide G.O.Ms.No.444, Industries and Commerce, dated 5-8-1981, two more posts of UDCs were sanctioned. Thus, the total number of posts of UDCs was increased from 22 to 39. The cadre strength of Accountants was also increased vide G.O.Ms.No.141, dated 6-3-1981, and

v) that as a sequel to increase in the cadre strength of the posts of U.D.Cs and Accountants, the Andhra Pradesh Khadi and Village Industries Board (for short, 'the Board') vide its letter dated 27-5-1982 recommended to the State Government to sanction

amendment of the cycle prescribed in Annexure-3, but the latter did not take any action in that regard and, on that account, they are being deprived of their legitimate right to be promoted to the higher posts.

In the counter-affidavit filed by him, Shri M. Samuel, the then Chief Executive Officer of the Board, admitted that the cadre strength of UDCs was increased from 22 to 39 vide G.O.Ms.No.141, dated 6-3-1981 and G.O.Ms.No.444, dated
5-8-1981, but averred that instead of accepting the recommendations of the Board, the State Government notified the new regulations titled as "the Andhra Pradesh Khadi and Village Industries Board Employees Recruitment and Service Conditions Regulations, 1996 (for short, 'the 1996 Regulations') and in the new regulations there is no cycle for promotion from the feeder cadre. According to Shri Samuel, in terms of Clause 8(iii) of the 1996 Regulations, promotions are required to be made on the basis of a common seniority of the employees belonging to the feeder categories. Shri Samuel has further averred that after framing of the 1996 Regulations, the entire establishment of the Board was divided into two wings i.e. Development & Administrative Wing and Accounts Wing. The UDCs and Stenographers come under the first wing, whereas the Auditors come under the second wing and the Board will have to make promotions in accordance with the new regulations.

Shri T.K. Sridhar argued that failure of the State Government to sanction the amendment proposed by the Board in the 1979 Regulations cannot justify denial of promotion to the petitioners who are entitled to be considered for promotion as per the amended cycle suggested by the Board. Learned counsel emphasized that the petitioners fulfill the conditions of eligibility prescribed under the 1979

Regulations and argued that the amendment proposed by the Board in the backdrop of increase in the cadre strength of the posts of UDCs ought to have been approved by the State Government without delay and if that had been done, the petitioners would have got their due promotions. He further argued that the 1996 Regulations are not retrospective and, therefore, the promotions against the vacancies, which became available from 1982 to 1996 cannot be made in accordance with those Regulations. Learned counsel also referred to the order passed in Writ Petition No.9448 of 1985 filed by the Accountants and submitted that in compliance of the direction given by the Court, the Board implemented the revised cycle for promotion to the cadre of Development Officers.

Shri V.T.M. Prasad, learned counsel for the Board referred to Section 29 of the Andhra Pradesh Khadi and Village Industries Board Act, 1958 (for short, 'the Act') to show that the power of the Board to make regulations is subject to the previous sanction of the State Government, and argued that the proposal made by the Board for amendment of the cycle prescribed for promotion from the feeder categories of UDCs., Auditors and Stenographers could not be acted upon by the Board because the State Government did not sanction the proposed amendment. Shri Prasad further argued that even if the amendments proposed by the Board were approved by the State Government, the same could not have been implemented with retrospective effect because Section 29 of the Act does not empower the Board to make regulations having retrospective operation. Learned counsel then submitted that with the enactment of the 1996 Regulations, the promotions will have to be made in accordance with the procedure prescribed therein and the Court cannot issue a direction for making promotions as per the cycle specified in

Annexure-3 appended to the 1979 Regulations.

I have thoughtfully considered the respective arguments. There is no dispute between the parties that under the 1979 Regulations, UDCs., were eligible for promotion to the posts of Superintendent and Accountant and they were entitled to be considered along with Auditors and Stenographers as per the cycle specified in Annexure-3. It is also not in dispute that after increase in the cadre strength of UDCs., the Board proposed amendment of the cycle for promotion to the posts of Superintendent and Accountant. If the State Government had sanctioned the proposed amendment, the petitioners could have been promoted to the posts of Superintendent or Accountant. However, the fact of the matter is that the recommendations made by the Board were not approved by the State Government and, on that account, the cycle specified in Annexure-3 of the 1979 Regulations was not revised. Therefore, this Court cannot issue a mandamus to the Board to make promotions to the posts of Superintendent and Accountant in accordance with the revised cycle.

Section 29 of the Act, which empowers the Board to make regulations, read as under:

> **29. Power to make regulations:**
> (1) The Board may, with the previous sanction of the Government, by notification, make regulations, not inconsistent with this Act and the rules made thereunder, for enabling the Board to discharge its functions under this Act.
>
> (2) In particular and without prejudice to the generality of the foregoing power, such regularisation may provide for all or any of the following matters, namely:
>
> (a) the terms and conditions of appointment and service and the sales of pay of the Chief Executive Officer and other

officers and servants of the Board including payment of travelling and daily allowances in respect of journeys undertaken by such officers and servants for the purposes of this Act;

(b) the time and place of meetings of the Board, the procedure to be followed in regard to transaction of business at such meetings and the quorum necessary for the transaction of such business at a meeting;

(c) the delegation of powers and duties of the Board to the standing finance committee the Chief Executive Officer or any employee of the Board;

(d) the maintenance of minutes of meetings of the Board and the transmission of copies thereof to the Government;

(e) the persons by whom, and the manner in which, payments, deposits and investments may be made on behalf of the Board.

(f) the custody of moneys required for the current expenditure of the Board and the investment of moneys not so required

(g) the form in which and the scale of fees to be levied for granting the certificates of genuineness of khadi and products of village industries may be granted by the Board, and the procedure for the grant of such certificates.

(3) The Government may, by notification, modify or rescind any regulation made and thereupon the regulation shall stand modified accordingly or shall cease to have effect, as the case may be."

A bare reading of the above reproduced provision makes it clear that the Board cannot suo motu make or amend the regulations. It can do so only with the previous sanction of the government. Therefore, in the absence of sanction by the State Government, the Court cannot issue a mandamus and compel the Board to act upon the regulations by taking into consideration the proposed amendment and promote the petitioners as per the revised cycle.

The petitioners have not disputed that the Board framed the

1996 Regulations with the previous sanction of the government and these regulations provide for promotion on the basis of a common seniority of the persons holding posts in the feeder cadres. This is evident from Clause 8 of the 1996 Regulations, which is reproduced below:

8. Promotion:

i) no employee shall be eligible for promotion for a higher category of post, from the category to which he is appointed unless he has satisfactorily completed the prescribed period of probation in that category, completed the minimum length of service in that category and has passed such tests as may be prescribed from time to time.

ii) The promotion to vacancies shall be made on the basis of merit-cum-seniority in accordance with the recommendations made by the Promotion Committee.

iii) Where promotions to higher category of posts are from different branches in the lower categories, as specified in Annexure-III, a common seniority list shall be prepared based on their seniority in the feeder categories.

iv) The selection from each branch of the feeder category shall be based on merit-cum-seniority. Where merit is approximately equal, seniority shall prevail.

v) Members of categories (i) and (ii) shall be eligible for promotion as Lower Division Clerks provided they hold a Degree in Arts/Science/Commerce from a recognized university and have put in not less than three years of regular service in such category."

The petitioners have not challenged the vires of the 1996 Regulations. Therefore, it is not possible to entertain their claim for

retrospective promotion on the spacious plea that failure of the State Government to sanction the amendment proposed by the Board has resulted in violation of their fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution of India.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

March 22, 2007

svs